REMARKS

Reconsideration of the present application as amended is respectfully requested.

By means of the present amendment, claims 7, 9, 14, 19 and 21 have been amended for better clarity. Claims 7, 9, 14, 19 and 21 were not amended in order to address issues of patentability and Applicants respectfully reserve all rights they may have under the Doctrine of Equivalents.

In the Office Action, claim 1-30 are provisionally rejected under 35 U.S.C. §101 statutory double patenting, as allegedly claiming the same invention as that of claim 1 of copending Application No. 10/014,196. It is believed that only claim 1 is rejected under 35 U.S.C. §101 statutory double patenting, since claims 2-30 were rejected under the judicially created doctrine of obviousness-type double patenting, as specifically recited on page 3, item 5 of the Office Action. Clarification is respectfully requested as to whether claims 2-30 are rejected under 35 U.S.C. §101 statutory double patenting or under the judicially created doctrine of obviousness-type double patenting. The rejection under

35 U.S.C. §101 statutory double patenting of claim 1 or of claims 1-30 is believed to be moot in light of the amendment to the claims.

In particular, it is respectfully submitted that the claims, as amended, are not directed to the same invention. Claim 1 in the copending Application No. 10/014,196 is directed to a:

> method of assembling and processing media content from multiple sources, comprising: ... automatically scanning available media sources, selecting a source and extracting from the media source, identifying information characterizing the content of the source. (Emphasis provided)

By contrast, amended independent claim 1 of the present application, where independent claim 18 is similarly amended, recites:

> method of providing **alerts** to sources of media content, comprising: establishing a profile corresponding to topics of interest, said profile information being at least one of time of day and location sensitive, and containing a plurality of topics of at least one of temporal and positional interest; ... comparing the identifying information to the profile and if a match is found, **providing an alert at said time of day** that the selected source is available for access. (Emphasis provided)

The MPEP under §804 II. A., in a section entitled "REQUIREMENTS OF A DOUBLE PATENTING REJECTION (INCLUDING PROVISIONAL REJECTIONS)", makes clear that (emphasis provided) "[i]n determining whether a statutory basis for a double patenting rejection exists, the question to be asked is: Is the same invention being claimed twice? 35 U.S.C. 101 prevents two patents from issuing on the same invention. 'Same invention' means identical subject matter." Miller v. Eagle Mfg. Co., 151 U.S. 186 (1984); In re Vogel, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and In re Ockert, 245 F.2d 467, 114 USPQ 330 (CCPA 1957).

Accordingly, to sustain a double patenting rejection under 35 U.S.C. §101, identical subject matter must be claimed. As guidance for determining whether identical subject matter is claimed, the MPEP section goes on to state that "[a] reliable test for double patenting under 35 U.S.C. 101 is whether a claim in the application could be literally infringed without literally infringing a corresponding claim in the patent. In re Vogel, 422 F.2d 438, 164 USPQ 619 (CCPA 1970). Is there an embodiment of the invention that falls within the scope of one claim, but not the other? If there

is such an embodiment, then identical subject matter is not defined by both claims and statutory double patenting would not exist. For example, the invention defined by a claim reciting a compound having a 'halogen' substituent is not identical to or substantively the same as a claim reciting the same compound except having a 'chlorine' substituent in place of the halogen because 'halogen' is broader than 'chlorine.'"

It is respectfully submitted that the above noted features of independent claims 1 and 18, as amended, are different from the features recited in the claims of the copending Application No. 10/014,196. Accordingly, it is respectfully submitted that the rejection under 35 U.S.C. §101, for statutory double patenting is improper and an indication to that effect is respectfully requested.

The Examiner provisionally rejected claims 2-30 under the judicially created doctrine of obviousness-type double patenting as being unpatentable over a copending Application No. 10/014,196. The Examiner indicated that a terminal disclaimer may be used to overcome this rejection. This rejection is also traversed for similar reasons noted above. However, it is respectfully submitted

that Applicants will consider filing a terminal disclaimer, if necessary in view of any allowable claims, upon indication that the present application is otherwise allowable.

In the Office Action, claims 18-30 are rejected under 35 U.S.C. §103(a) as allegedly unpatentable over U.S. Pub. No. 2002/0152463 (Dudkiewicz) in view of an article entitled "Towards Music Understanding Without Separation: Segmenting Music With Correlogram Comodulation" (Scheirer). Further, claims 1-6, 8 and 10-14 are rejected under 35 U.S.C. §103(a) as allegedly unpatentable over U.S. Pub. No. 2002/0147984 (Tomsen) in view of U.S. 6,449,767 (Krapf) and Scheirer. Claims 7 and 9 are rejected under 35 U.S.C. §103(a) as allegedly unpatentable over Tomsen in view of Krapf, Scheirer and U.S. Pub. No. 2003/0051252 (Miyaoku). In addition, claims 15-17 are rejected under 35 U.S.C. §103(a) as allegedly unpatentable over Tomsen in view of Krapf, Scheirer and Dudkiewicz.

It is respectfully submitted that claims 1-5 and 7-30 are patentable over Dudkiewicz, Scheirer, Tomsen, Krapf and Miyaoku for at least the following reasons.

Dudkiewicz is directed to a system and method for personalized

presentation of video programming, where a viewer profile includes data related to alerts per hour (that specifies the number of times per hour that an alert is provided to the viewer) and alert minutes in advance (that specifies the amount of time prior to a programming event that the viewer is to be notified) as shown in FIG 11 and described on page 8, paragraph [075]. Page 9, paragraph [0081] recites:

> Notice may be provided in various manners, such as generating an audible tone or displaying a banner on the video display device. The time of the notification may be determined with reference to the value in the Profile_Alert_Minutes_In_Advance field of a view profile as show in IFG. 11.

Although Dudkiewicz teaches providing notice, there is no teaching or suggestion of providing such notice at a time of day included in the profile information, as the Dudkiewicz profile information does not include or provide an association with any such time of day. Further, Dudkiewicz does not teach or suggest any location sensitive profile information.

Tomsen is directed to an interactive television system initiates context-sensitive requests for supplemental content related to a television broadcast when a viewer presses a "FIND"

button, as shown in box 1102 in FIG 11, or when a viewer changes channels, as shown in box 1302 in FIG 13. The received supplemental content or search results are pre-cached for retrieval and display as shown in FIG 8, and boxes 1116, 1320 in FIGs 11, 13, respectively. Even assuming that such a display of search results is notice, there is still no teaching or suggestion in Tomsen of "providing an alert at said time of day", where profile information is time of day and/or location sensitive, as recited in independent claims 1 and 18. Krapf, Scheirer, Miyaoku and Dudkiewicz are cited in rejecting other claims as allegedly showing other features and do not remedy the deficiencies in Tomsen.

In summary, it is respectfully submitted that Dudkiewicz, Tomsen, Scheirer, Krapf and Miyaoku, or combinations thereof, do not teach or suggest the present invention as recited in independent claim 1, and similarly recited in independent claim 18 which, amongst other patentable features, requires:

> establishing a profile corresponding to topics of interest, said profile information being at least one of time of day and location sensitive, and containing a plurality of topics of at least one of temporal and positional interest; ...
>
> comparing the identifying information to the profile and if a match is found, providing an alert at said time of day that the selected source is available for access. (Emphasis provided). (Emphasis added)

Accordingly, it is respectfully submitted that independent claims 1 and 18 are allowable, and allowance thereof is respectfully requested. In addition, it is respectfully submitted that claims 2-5, 7-17 and 19-30 should also be allowed at least based on their dependence from independent claims 1 and 18.

In addition, Applicants deny any statement, position or averment of the Examiner that is not specifically addressed by the foregoing argument and response. Any rejections and/or points of argument not addressed would appear to be moot in view of the presented remarks. However, the Applicants reserve the right to submit further arguments in support of the above stated position, should that become necessary. No arguments are waived and none of the Examiner's statements are conceded.

It is believed that no additional fees or charges are currently due. However, in the event that any additional fees or charges are required for entrance of the accompanying amendment, they may be charged to applicants' representatives Deposit Account No. 50-3649. In addition, please credit any overpayments related to any fees paid in connection with the accompanying amendment to Deposit Account No. 50-3649.

In view of the above, it is respectfully submitted that the present application is in condition for allowance, and a Notice of Allowance is earnestly solicited.

Please direct all future correspondence related to this application to:

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Respectfully submitted,

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